

AMENDED IN SENATE JUNE 24, 2013

AMENDED IN SENATE JUNE 14, 2013

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 477

Introduced by Assembly Member Chau

February 19, 2013

An act to add Section 1208 to the Civil Code, to add Section 8215 to the Government Code, *and to amend Sections 15632, 15633, 15634, 15637, 15640, and 15655.5 of*, and to add Section 15630.2 to the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 477, as amended, Chau. Elder and dependent adult abuse: mandated reporting.

Existing law, the Financial Elder Abuse Reporting Act of 2005, establishes procedures for the reporting of suspected financial abuse of an elder or dependent adult, as defined. These procedures require mandated reporters of suspected financial abuse of an elder or dependent adult, as defined, to report known or suspected instances of financial abuse of an elder or dependent adult, as specified. Existing law makes a violation of the reporting requirements subject to a civil penalty.

This bill would include notaries public in the definition of mandated reporters of suspected financial abuse of an elder or dependent adult and would require a notary public, except as provided, to report known

or suspected instances of financial abuse of an elder or dependent adult if the notary public has observed or has knowledge of suspected financial abuse in connection with providing notary services. The bill would also prohibit a notary public from performing a notarial act for an elder or dependent adult under specified circumstances, including when, in the notary public's judgment, the elder or dependent adult is not acting of his or her own free will.

Existing law makes specified reports, including reports of known or suspected financial abuse of an elder or dependent adult, confidential. Any violation of the confidentiality of these reports is a misdemeanor.

This bill would extend that confidentiality to a notary public's report of known or suspected financial abuse of an elder or dependent adult. By increasing the scope of a crime, the bill would impose a state-mandated local program.

Existing law authorizes a care custodian, clergy member, health practitioner, and an employee of an adult protective services agency or a law enforcement agency to present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees incurred in any action against that person for making a report of known or suspected abuse of an elder or dependent adult, as specified.

This bill would additionally authorize a mandated reporter of known or suspected financial abuse of an elder or dependent adult to present a claim to the board for reasonable attorney's fees incurred in an action against that person for making a report pursuant to these provisions.

Existing law requires a county adult protective services agency to report every known or suspected instance of abuse of an elder or dependent adult, as specified, to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse. Existing law also requires a county adult protective services agency to provide mandated reporters of suspected financial abuse of an elder or dependent adult with instructional materials regarding abuse and neglect of an elder or dependent adult and their obligation to report under these provisions.

The bill would require a county adult protective services agency to additionally report a known or suspected instance of abuse reported by a notary public and to additionally provide instructional materials to notaries public. By increasing the duties of local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1208 is added to the Civil Code, to read:
2 1208. A notary public performing services under this article
3 shall comply with the reporting mandate specified in Section
4 15630.2 of the Welfare and Institutions Code.

5 SEC. 2. Section 8215 is added to the Government Code, to
6 read:
7 8215. A notary public shall comply with the reporting mandate
8 specified in Section 15630.2 of the Welfare and Institutions Code.
9 Any violation of that reporting mandate shall be punished pursuant
10 to that section.

11 SEC. 3. Section 15630.2 is added to the Welfare and
12 Institutions Code, to read:
13 15630.2. (a) As used in this section, “mandated reporter of
14 suspected financial abuse of an elder or dependent adult” or
15 “mandated reporter” means notaries public.

16 (b) As used in this section, “financial abuse” has the same
17 meaning as in Section 15610.30.

18 (c) (1) Any notary public who, in connection with providing
19 notary services, has observed or has knowledge of suspected
20 financial abuse of an elder or dependent adult shall report the
21 known or suspected instance of financial abuse by telephone or
22 through a confidential Internet reporting tool, as authorized
23 pursuant to Section 15658, immediately, or as soon as practicably
24 possible. If reported by telephone, a written report shall be sent,
25 or an Internet report shall be made through the confidential Internet
26 reporting tool established in Section 15658, within two working

1 days to the local adult protective services agency or the local law
2 enforcement agency.

3 (2) A notary public who is also an officer or employee of a
4 financial institution is subject to the reporting requirement under
5 Section 15630.1 and not the reporting requirement under this
6 section.

7 (3) When two or more mandated reporters jointly have
8 knowledge or reasonably suspect that financial abuse of an elder
9 or a dependent adult for which the report is mandated has occurred,
10 and when there is an agreement among them, the telephone report
11 or Internet report, as authorized by Section 15658, may be made
12 by a member of the reporting team who is selected by mutual
13 agreement. A single report may be made and signed by the selected
14 member of the reporting team. Any member of the team who has
15 knowledge that the member designated to report has failed to do
16 so shall thereafter make that report.

17 (4) If the mandated reporter knows that the elder or dependent
18 adult resides in a long-term care facility, as defined in Section
19 15610.47, the report shall be made to the local ombudsman or local
20 law enforcement agency.

21 (d) An allegation by the elder or dependent adult, or any other
22 person, that financial abuse has occurred is not sufficient to trigger
23 the reporting requirement under this section if both of the following
24 conditions are met:

25 (1) The mandated reporter of suspected financial abuse of an
26 elder or dependent adult is aware of no other corroborating or
27 independent evidence of the alleged financial abuse of an elder or
28 dependent adult. The mandated reporter of suspected financial
29 abuse of an elder or dependent adult is not required to investigate
30 any accusations.

31 (2) In the exercise of his or her professional judgment, the
32 mandated reporter of suspected financial abuse of an elder or
33 dependent adult reasonably believes that financial abuse of an
34 elder or dependent adult did not occur.

35 (e) Failure to report financial abuse under this section shall be
36 subject to a civil penalty not exceeding one thousand dollars
37 (\$1,000) or if the failure to report is willful, a civil penalty not
38 exceeding five thousand dollars (\$5,000), which shall be paid by
39 the mandated reporter to the party bringing the action. Subdivision
40 (h) of Section 15630 shall not apply to violations of this section.

1 (f) ~~(4)~~—The civil penalty provided for in subdivision (e) shall
2 be recovered only in a civil action brought against the mandated
3 reporter by the Attorney General, district attorney, or county
4 counsel. No action shall be brought under this section by any
5 person other than the Attorney General, district attorney, or county
6 counsel. Multiple actions for the civil penalty shall not be brought
7 for the same violation.

8 ~~(2) Nothing in the Financial Elder Abuse Reporting Act of 2005~~
9 ~~shall be construed to limit, expand, or otherwise modify any civil~~
10 ~~liability or remedy that may exist under this or any other law.~~

11 (g) As used in this section, “suspected financial abuse of an
12 elder or dependent adult” occurs when a person who is required
13 to report under subdivision (c) observes or has knowledge of
14 behavior or unusual circumstances or transactions, or a pattern of
15 behavior or unusual circumstances or transactions, that would lead
16 an individual with like training or experience, based on the same
17 facts, to form a reasonable belief that an elder or dependent adult
18 is the victim of financial abuse as defined in Section 15610.30.

19 (h) Reports of suspected financial abuse of an elder or dependent
20 adult made by a mandated reporter pursuant to this section are
21 covered under subdivision (b) of Section 47 of the Civil Code.

22 (i) A notary public shall not perform a notarial act for an elder
23 or dependent adult in the either of following circumstances:

24 (1) The elder or dependent adult has a demeanor that causes the
25 notary public to have a compelling doubt about whether the elder
26 or dependent adult understands the consequences of the transaction
27 or document requiring the notarial act.

28 (2) In the notary public’s judgment, the elder or dependent adult
29 is not acting of his or her own free will.

30 *SEC. 4. Section 15632 of the Welfare and Institutions Code is*
31 *amended to read:*

32 15632. (a) In any court proceeding or administrative hearing,
33 neither the physician-patient privilege nor the
34 psychotherapist-patient privilege applies to the specific information
35 reported pursuant to this chapter.

36 (b) ~~Nothing in this chapter shall be interpreted as requiring an~~
37 ~~attorney to violate his or her oath and duties pursuant to Section~~
38 ~~6067 or require the disclosure of information protected by the~~
39 ~~attorney-client privilege or the duty under subdivision (e) of~~
40 ~~Section 6068 of the Business and Professions Code, and Article 3~~

1 (~~commencing with Section 950~~) of Chapter 4 of Division 8 of the
2 Evidence Code.

3 *SEC. 5. Section 15633 of the Welfare and Institutions Code is*
4 *amended to read:*

5 15633. (a) The reports made pursuant to Sections 15630,
6 15630.1, 15630.2, and 15631 shall be confidential and may be
7 disclosed only as provided in subdivision (b). Any violation of the
8 confidentiality required by this chapter is a misdemeanor
9 punishable by not more than six months in the county jail, by a
10 fine of five hundred dollars (\$500), or by both that fine and
11 imprisonment.

12 (b) Reports of suspected abuse of an elder or dependent adult
13 and information contained therein may be disclosed only to the
14 following:

15 (1) Persons or agencies to whom disclosure of information or
16 the identity of the reporting party is permitted under Section
17 15633.5.

18 (2) (A) Persons who are trained and qualified to serve on
19 multidisciplinary personnel teams may disclose to one another
20 information and records that are relevant to the prevention,
21 identification, or treatment of abuse of elderly or dependent
22 persons.

23 (B) Except as provided in subparagraph (A), any personnel of
24 the multidisciplinary team or agency that receives information
25 pursuant to this chapter, shall be under the same obligations and
26 subject to the same confidentiality penalties as the person
27 disclosing or providing that information. The information obtained
28 shall be maintained in a manner that ensures the maximum
29 protection of privacy and confidentiality rights.

30 (c) This section shall not be construed to allow disclosure of
31 any reports or records relevant to the reports of abuse of an elder
32 or dependent adult if the disclosure would be prohibited by any
33 other provisions of state or federal law applicable to the reports or
34 records relevant to the reports of the abuse, nor shall it be construed
35 to prohibit the disclosure by a financial institution of any reports
36 or records relevant to the reports of abuse of an elder or dependent
37 adult if the disclosure would be required of a financial institution
38 by otherwise applicable state or federal law or court order.

39 *SEC. 6. Section 15634 of the Welfare and Institutions Code is*
40 *amended to read:*

1 15634. (a) ~~No~~—A care custodian, clergy member, health
2 practitioner, mandated reporter of suspected financial abuse of an
3 elder or dependent adult, or employee of an adult protective
4 services agency or a local law enforcement agency who reports a
5 known or suspected instance of abuse of an elder or dependent
6 adult shall *not* be civilly or criminally liable for any report required
7 or authorized by this ~~article~~; *chapter*. Any other person reporting
8 a known or suspected instance of abuse of an elder or dependent
9 adult shall not incur civil or criminal liability as a result of any
10 report authorized by this ~~article~~; *chapter*, unless it can be proven
11 that a false report was made and the person knew that the report
12 was false. ~~No~~—A person required to make a report pursuant to this
13 ~~article~~; *chapter*, or any person taking photographs at his or her
14 discretion, shall *not* incur any civil or criminal liability for taking
15 photographs of a suspected victim of abuse of an elder or dependent
16 adult or causing photographs to be taken of ~~such~~ a suspected victim
17 or for disseminating the photographs with the reports required by
18 this ~~article~~; *chapter*. However, this section shall not be construed
19 to grant immunity from this liability with respect to any other use
20 of the photographs.

21 (b) ~~No~~—A care custodian, clergy member, health practitioner,
22 mandated reporter of suspected financial abuse of an elder or
23 dependent adult, or employee of an adult protective services agency
24 or a local law enforcement agency who, pursuant to a request from
25 an adult protective services agency or a local law enforcement
26 agency investigating a report of known or suspected abuse of an
27 elder or dependent adult, provides the requesting agency with
28 access to the victim of a known or suspected instance of abuse of
29 an elder or dependent adult, shall *not* incur civil or criminal liability
30 as a result of providing that access.

31 (c) The Legislature finds that, even though it has provided
32 immunity from liability to persons required to report abuse of an
33 elder or dependent adult, immunity does not eliminate the
34 possibility that actions may be brought against those persons based
35 upon required reports of abuse. In order to further limit the financial
36 hardship that those persons may incur as a result of fulfilling their
37 legal responsibilities, it is necessary that they not be unfairly
38 burdened by legal fees incurred in defending those actions.
39 Therefore, a care custodian, clergy member, health practitioner,
40 *mandated reporter of suspected financial abuse of an elder or*

1 *dependent adult*, or an employee of an adult protective services
 2 agency or a local law enforcement agency may present to the
 3 California Victim Compensation and Government Claims Board
 4 a claim for reasonable ~~attorneys'~~² *attorney's* fees incurred in any
 5 action against that person on the basis of making a report required
 6 or authorized by this ~~article~~ *chapter* if the court has dismissed the
 7 action upon a demurrer or motion for summary judgment made
 8 by that person, or if he or she prevails in the action. The California
 9 Victim Compensation and Government Claims Board shall allow
 10 that claim if the requirements of this subdivision are met, and the
 11 claim shall be paid from an appropriation to be made for that
 12 purpose. ~~Attorneys'~~² *Attorney's* fees awarded pursuant to this
 13 section shall not exceed an hourly rate greater than the rate charged
 14 by the Attorney General at the time the award is made and shall
 15 not exceed an aggregate amount of fifty thousand dollars (\$50,000).
 16 This subdivision shall not apply if a public entity has provided for
 17 the defense of the action pursuant to Section 995 of the
 18 Government Code.

19 *SEC. 7. Section 15637 of the Welfare and Institutions Code is*
 20 *amended to read:*

21 15637. In any court proceeding or administrative hearing,
 22 neither the physician-patient privilege nor the
 23 psychotherapist-patient privilege applies to the specific information
 24 required to be reported pursuant to this chapter. Nothing in this
 25 chapter shall be interpreted as requiring an attorney to violate his
 26 or her oath and duties pursuant to Section 6067 or require the
 27 disclosure of information protected by the attorney-client privilege
 28 or the duty under subdivision (e) of Section 6068 of the Business
 29 and Professions Code, and Article 3 (commencing with Section
 30 950) of Chapter 4 of Division 8 of the Evidence Code.

31 *SEC. 8. Section 15640 of the Welfare and Institutions Code is*
 32 *amended to read:*

33 15640. (a) (1) An adult protective services agency shall
 34 immediately, or as soon as practically possible, report by telephone
 35 to the law enforcement agency having jurisdiction over the case
 36 any known or suspected instance of criminal activity, and to any
 37 public agency given responsibility for investigation in that
 38 jurisdiction of cases of elder and dependent adult abuse, every
 39 known or suspected instance of abuse *of an elder or dependent*
 40 *adult* pursuant to Section 15630 ~~or 15630.1 of an elder or~~

1 ~~dependent adult~~, 15630.1, or 15630.2. A county adult protective
2 services agency shall also send a written report thereof within two
3 working days of receiving the information concerning the incident
4 to each agency to which it is required to make a telephone report
5 under this subdivision. Prior to making any cross-report of
6 allegations of financial abuse to law enforcement agencies, an
7 adult protective services agency shall first determine whether there
8 is reasonable suspicion of any criminal activity.

9 (2) If an adult protective services agency receives a report of
10 abuse alleged to have occurred in a long-term care facility, that
11 adult protective services agency shall immediately inform the
12 person making the report that he or she is required to make the
13 report to the long-term care ombudsman program or to a local law
14 enforcement agency. The adult protective services agency shall
15 not accept the report by telephone but shall forward any written
16 report received to the long-term care ombudsman.

17 (b) If an adult protective services agency or local law
18 enforcement agency or ombudsman program receiving a report of
19 known or suspected elder or dependent adult abuse determines,
20 pursuant to its investigation, that the abuse is being committed by
21 a health practitioner licensed under Division 2 (commencing with
22 Section 500) of the Business and Professions Code, or any related
23 initiative act, or by a person purporting to be a licensee, the adult
24 protective services agency or local law enforcement agency or
25 ombudsman program shall immediately, or as soon as practically
26 possible, report this information to the appropriate licensing
27 agency. The licensing agency shall investigate the report in light
28 of the potential for physical harm. The transmittal of information
29 to the appropriate licensing agency shall not relieve the adult
30 protective services agency or local law enforcement agency or
31 ombudsman program of the responsibility to continue its own
32 investigation as required under applicable provisions of law. The
33 information reported pursuant to this paragraph shall remain
34 confidential and shall not be disclosed.

35 (c) A local law enforcement agency shall immediately, or as
36 soon as practically possible, report by telephone to the long-term
37 care ombudsman program when the abuse is alleged to have
38 occurred in a long-term care facility or to the county adult
39 protective services agency when it is alleged to have occurred
40 anywhere else, and to the agency given responsibility for the

1 investigation of cases of elder and dependent adult abuse every
2 known or suspected instance of abuse of an elder or dependent
3 adult. A local law enforcement agency shall also send a written
4 report thereof within two working days of receiving the information
5 concerning the incident to any agency to which it is required to
6 make a telephone report under this subdivision.

7 (d) A long-term care ombudsman coordinator may report the
8 instance of abuse to the county adult protective services agency
9 or to the local law enforcement agency for assistance in the
10 investigation of the abuse if the victim gives his or her consent. A
11 long-term care ombudsman program and the Licensing and
12 Certification Division of the State Department of Public Health
13 shall immediately report by telephone and in writing within two
14 working days to the bureau any instance of neglect occurring in a
15 health care ~~facility~~, *facility* that has seriously harmed any patient
16 or reasonably appears to present a serious threat to the health or
17 physical well-being of a patient in that facility. If a victim or
18 potential victim of the neglect withholds consent to being identified
19 in that report, the report shall contain circumstantial information
20 about the neglect, but shall not identify that victim or potential
21 victim ~~and the~~. *The* bureau and the reporting agency shall maintain
22 the confidentiality of the report until the report becomes a matter
23 of public record.

24 (e) When a county adult protective services agency, a long-term
25 care ombudsman program, or a local law enforcement agency
26 receives a report of abuse, neglect, or abandonment of an elder or
27 dependent adult alleged to have occurred in a long-term care
28 facility, that county adult protective services agency, long-term
29 care ombudsman coordinator, or local law enforcement agency
30 shall report the incident to the licensing agency by telephone as
31 soon as possible.

32 (f) County adult protective services agencies, long-term care
33 ombudsman programs, and local law enforcement agencies shall
34 report the results of their investigations of referrals or reports of
35 abuse to the respective referring or reporting agencies.

36 *SEC. 9. Section 15655.5 of the Welfare and Institutions Code*
37 *is amended to read:*

38 15655.5. A county adult protective services agency shall
39 provide the organizations listed in paragraphs (v), (w), and (x) of
40 Section 15610.17, and mandated reporters of suspected financial

1 abuse of an elder or dependent adult pursuant to ~~Section 15630.1,~~
2 *Sections 15630.1 and 15630.2*, with instructional materials
3 regarding abuse and neglect of an elder or dependent adult and
4 their obligation to report under this chapter. At a minimum, the
5 instructional materials shall include *all of* the following:

6 (a) An explanation of abuse and neglect of an elder or dependent
7 adult, as defined in this chapter.

8 (b) Information on how to recognize potential abuse and neglect
9 of an elder or dependent adult.

10 (c) Information on how the county adult protective services
11 agency investigates reports of known or suspected abuse and
12 neglect.

13 (d) Instructions on how to report known or suspected incidents
14 of abuse and neglect, including the appropriate telephone numbers
15 to call and what types of information would assist the county adult
16 protective services agency with its investigation of the report.

17 *SEC. 10. No reimbursement is required by this act pursuant*
18 *to Section 6 of Article XIII B of the California Constitution for*
19 *certain costs that may be incurred by a local agency or school*
20 *district because, in that regard, this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*

26 *However, if the Commission on State Mandates determines that*
27 *this act contains other costs mandated by the state, reimbursement*
28 *to local agencies and school districts for those costs shall be made*
29 *pursuant to Part 7 (commencing with Section 17500) of Division*
30 *4 of Title 2 of the Government Code.*